

ORIGINAL

(S E R V E D)
(November 19, 2001)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

November 19, 2001

DOCKET NO. 99-04

SHIPCO TRANSPORT, INC.

v.

INTER-MARITIME CONTAINER LINES, INC., ET AL.

VOLUNTARY DISMISSAL OF COMPLAINT GRANTED

The complaint in this proceeding, filed April 27, 1999, essentially concerns respondents' alleged bad faith refusal to pay freight and related charges, malfeasance, and violations of sections 10(a)(1) and 10(d)(1) of the Shipping Act of 1984. Complainant sought reparation of \$22,136.35, the balance due of the outstanding charges, and a cease and desist order. Respondents filed an answer to the complaint. Respondents also filed a Chapter 11 petition with the U.S. Bankruptcy court, S.D. N.Y., on July 24, 2001, which, pursuant to 11 U.S.C. § 362, operated as a stay against acts that may affect the property of the bankruptcy estate.

However, pursuant to 11 U.S.C. § 362(b), the filing of a petition by a private complainant not a government unit did not operate as a stay:

(4) under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a government unit to enforce such government unit's police or reaulatorv powers. (Emphasis added.)

It is clear that this complaint for money damages by a private complainant, not a governmental unit, did not come within the 11 U.S.C. § 362(b)(4) exception, quoted above, and the motion of complainant for summary judgment was accordingly denied. Complainant was directed to seek a lifting of the stay by the court. Complainant subsequently indicated that the residue of bond funds for the respondents was insufficient to justify the filing of a motion to lift the stay and any subsequent proceeding here. In the circumstances, complainant now seeks voluntary dismissal of its complaint.

In Docket No. 94-05, Maritrend, Inc. v. The Galveston Wharves, Order Approving Stipulation of Dismissal with Prejudice on Condition (ALJ, unreported), served July 18, 1994, it is stated in part, as follows:

The FMC's Rules of Practice and Procedure do not address voluntary dismissals of actions; but Rule 41(a) of the Federal Rules of Civil Procedure ("FRCP") which governs voluntary dismissals of actions provides that, where, as here, an answer to the complaint has been filed, dismissal may only be had by an order of the court. Rule 41(a)(2) further states that such dismissal is without prejudice unless otherwise specified in the order. *Id.* at 3.

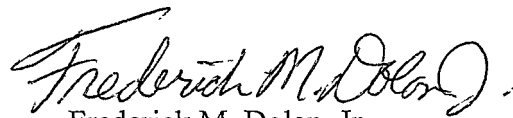
Thus it follows that, since an answer was filed, complainant properly filed a request that the complaint be dismissed, which will be granted without prejudice. In a somewhat analogous situation

in *So. Pacific Trans. Co. and Atchison, Topeka & Santa Fe Rwy. Co. v. Port of Long Beach*,
27 S.R.R. 690 (1996), the Commission observed that:

. . . With the exception of cases involving ocean carrier rates in which settlement might result in collection of charges not authorized by a tariff, parties are always free, of course, to settle their commercial disputes without invoking the jurisdiction of the Commission. , , , *Id.* at 692.

Thus, complainant's request for voluntary dismissal of the complaint will be granted.

IT IS ORDERED, that the complaint in Docket No. 99-04, *Shzpc Transport, Inc. v. Inter-Maritime Container Lines, Inc., et al.*, is dismissed without prejudice.



Frederick M. Dolan, Jr.
Administrative Law Judge